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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ST. JOHN'S HOSPITAL,)
Appellant,)
vs.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 226

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a fifty dollar civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) as a formal hearing in the Longview Library, Longview, at 12:30 p.m., December 21, 1972.

Appellant was represented by Michael Ivanick and Wayne M. Vaughan, its chief engineer and maintenance engineer, respectively. Respondent appeared through its counsel, James D. Ladley. Thomas E. Archer, Kelso court reporter, recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were offered and
2 admitted.

3 On the basis of testimony heard and exhibits examined, the Pollution
4 Control Hearings Board prepared Proposed Findings of Fact, Conclusions
5 and Order which were submitted to the appellant and respondent on
6 February 14, 1973. No objections or exceptions to the Proposed Findings,
7 Conclusions and Order having been received, the Pollution Control
8 Hearings Board makes and enters the following:

9 FINDINGS OF FACT

10 I.

11 Shortly after noon on October 31, 1972 from the boiler stack of
12 St. John's Hospital, 15th and East Kessler Boulevard, Longview, Cowlitz
13 County, smoke of opacity denser than No. 3 on the Ringelmann scale was
14 emitted for more than three minutes.

15 II.

16 The emission occurred during a necessary and temporary change over

17 III.

18 As the result of a similar incident on October 2, 1970, respondent
19 had informed appellant that respondent should be notified by appellant of
20 unavoidable upset conditions. Appellant accepted this request, attempted
21 to comply with it, but did not have the same understanding as respondent
22 of what constituted an "upset condition."

23 IV.

24 On October 31, 1972, an employee of appellant made at least four
25 outdoor visual inspections of the hospital boiler stack during the period .

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 from noon to 12:15 p.m., saw two different black smoke emissions, adjusted
2 the firing of the boiler to control the emissions and, not regarding the
3 emissions as an "upset condition," made no attempt to contact respondent
4 regarding the emissions. Subsequently, appellant adopted a policy of
5 notifying respondent of "change over" smoke emissions.

6 V.

7 Section 4.02 of respondent's Regulation I makes it unlawful to
8 permit the emission for more than three minutes in any hour of smoke
9 darker in density than No. 2 on the Ringelmann scale. Section 4.07(1) of
10 respondent's Regulation I provides for waiver of violation if the
11 incident is caused by "unavoidable upset conditions" which are reported
12 to the Southwest Air Pollution Control Authority "as soon as possible."

13 VI.

14 Respondent served appellant with a formal Notice of Violation of
15 Section 4.02 of respondent's Regulation I and assessed a fifty dollar
16 civil penalty in connection therewith. The penalty is the subject of
17 this appeal.

18 From these Findings, the Pollution Control Hearings Board
19 comes to these

20 CONCLUSIONS

21 I.

22 Appellant was in violation of Section 4.02 of respondent's Regulation
23 I on October 31, 1972.

24 II.

25 The fifty dollar civil penalty, while reasonable because of
26 respondent's prior warning on the necessity for notification of respondent

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 of unavoidable upset conditions, appears to be questionable in view of
2 appellant's misunderstanding of what constituted an upset condition. The
3 necessity for collection of the penalty is diminished further by
4 appellant's subsequent and continuing efforts to give respondent prompt
5 notice of unavoidable smoke emissions.

6 Therefore, the Pollution Control Hearings Board issues this

7 ORDER

8 The violation of Section 4.02 of respondent's Regulation I is
9 affirmed, but the instant civil penalty of fifty dollars is suspended
10 pending no subsequent violations which can be attributed to a failure
11 by appellant to comply with Section 4.07(1) of respondent's Regulation I.

12 DONE at Olympia, Washington this 3rd day of April, 1973.

13 POLLUTION CONTROL HEARINGS BOARD

14
15 Walt Woodward
16 WALT WOODWARD, Chairman

17
18 W. A. GISSBERG, Member

19
20 James T. Sheehy
21 JAMES T. SHEEHY, Member

22 Mr. Gissberg, not having participated in this case, did not sign
23 the Order.

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27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER